

16A C.J.S. Constitutional Law § 791

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Constitutional Law

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PART III. Overview of Protected Personal Rights and Freedoms; Police Power

IX. Personal, Civil, and Political Rights and Freedoms

C. Personal Liberty

3. Right to Travel

a. In General

§ 791. Durational residency requirements

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law  1282

Durational residency requirements that penalize travel or interstate migration inherently infringe on the right to travel.

A state, outside certain ill-defined circumstances, cannot classify its citizens by the length of their residence in the state without violating their right to travel¹ and may not create classifications which, by imposing burdens or restrictions on newer residents which do not apply to all residents, deter or penalize the migration of persons who exercise their right to travel to the state.² States may violate the constitutional right to travel if they condition eligibility for public benefits³ or public employment⁴ or political rights such as voter eligibility⁵ or candidacy for public office⁶ on a person's term of residency. However, the relevant distinction when evaluating a claim asserting a violation of the fundamental right to travel is between long-term and short-term residents, not current residents and prospective residents; the right to travel simply is not implicated when there is no discrimination based on the duration of one's residency.⁷ In other words, a residency requirement providing that an individual must live

within a given political entity to receive a benefit, without regard to the length of time he or she has lived there, does not infringe the right to interstate travel.⁸

Not all durational residency requirements trigger heightened scrutiny of the right to travel.⁹ Durational residency requirements that act as penalties on travel or interstate migration¹⁰ inherently infringe on the exercise of the right to travel.¹¹ However, such requirements are not *per se* unconstitutional despite the fact that they always burden to some extent the exercise of the right to travel.¹² For instance, the imposition on a welfare applicant of a reasonable waiting period and a residency requirement, the duration of which is dictated only by the nature of the case and the difficulty of investigation, does not place a penalty on the right to travel,¹³ and states may properly condition nonessential benefits and rights, such as lower college tuition, on a term of residency.¹⁴ Permissible justifications for discrimination between residents and nonresidents are inapplicable to a nonresident's exercise of the right to move into another state and become a resident of that state.¹⁵

The determination of whether a residency requirement infringes the right to travel does not depend on what benefits other states choose to provide,¹⁶ and the fact that a citizen may lose a monetary benefit upon migration from a state which provides the benefit does not mean that the right to travel has been infringed.¹⁷

A state may have a constitutionally sound durational residency requirement for dissolution of marriage.¹⁸ A statutory requirement that an alien who marries a United States citizen while he or she is subject to deportation proceedings live outside the United States for two years after the marriage does not violate the citizen spouse's right of residence.¹⁹

Durational residency requirements which are justified solely on the basis of budgetary or record-keeping considerations may be struck down as penalizing the exercise of the fundamental right to travel²⁰ as the conservation of public funds is not a sufficient state interest to sustain a durational residence requirement which, in effect, penalizes the exercise of the right to freely migrate and settle in another state.²¹

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Footnotes

1 U.S.—Callaway v. Samson, 193 F. Supp. 2d 783 (D.N.J. 2002).

2 Cal.—Tobe v. City of Santa Ana, 9 Cal. 4th 1069, 40 Cal. Rptr. 2d 402, 892 P.2d 1145 (1995).

Welfare benefits

Neither mere rationality nor some intermediate standard of review would be used to judge constitutionality of statute limiting new residents of state, for 12 months, to Temporary Assistance to Needy Families benefits they would have received in state of their prior residence, which discriminated against some of state's citizens because they had been domiciled in state for less than year.

U.S.—Saenz v. Roe, 526 U.S. 489, 119 S. Ct. 1518, 143 L. Ed. 2d 689 (1999).

3 U.S.—Maldonado v. Houstoun, 157 F.3d 179 (3d Cir. 1998); Westenfelder v. Ferguson, 998 F. Supp. 146 (D.R.I. 1998).

Minn.—Mitchell v. Steffen, 487 N.W.2d 896 (Minn. Ct. App. 1992), aff'd, 504 N.W.2d 198 (Minn. 1993).

N.Y.—Aumick v. Bane, 161 Misc. 2d 271, 612 N.Y.S.2d 766 (Sup 1994).

Twelve-month limitation

A California statute limiting new residents of the state, for 12 months, to Temporary Assistance to Needy Families (TANF) benefits they would have received in the state of their prior

residence was unconstitutional as violating the Fourteenth Amendment right to travel; the state's legitimate interest in saving money provided no justification for discrimination among equally eligible citizens, neither the duration of recipients' California residence nor the identity of their prior states of residence had any relevance to their need for benefits, and those factors did not bear any relationship to the state's interest in making an equitable allocation of funds to be distributed among its needy citizens.

4 U.S.—Saenz v. Roe, 526 U.S. 489, 119 S. Ct. 1518, 143 L. Ed. 2d 689 (1999).

5 Mich.—Musto v. Redford Tp., 137 Mich. App. 30, 357 N.W.2d 791 (1984).

6 U.S.—Fisher v. Herseth, 374 F. Supp. 745 (D.S.D. 1974).

7 U.S.—Brill v. Carter, 455 F. Supp. 172 (D. Md. 1978).

8 Ky.—Hall v. Miller, 584 S.W.2d 51 (Ky. Ct. App. 1979).

9 U.S.—Connelly v. Steel Valley School Dist., 706 F.3d 209, 289 Ed. Law Rep. 484 (3d Cir. 2013).

10 U.S.—International Organization of Masters, Mates & Pilots v. Andrews, 831 F.2d 843 (9th Cir. 1987); Fayerweather v. Town of Narragansett Housing Authority, 848 F. Supp. 19 (D.R.I. 1994).

11 Idaho—Tiffany v. City of Payette, 121 Idaho 396, 825 P.2d 493 (1992).

12 N.H.—Seabrook Police Ass'n v. Town of Seabrook, 138 N.H. 177, 635 A.2d 1371 (1993).

13 W. Va.—Morgan v. City of Wheeling, 205 W. Va. 34, 516 S.E.2d 48 (1999).

Appropriately defined and uniformly applied

A bona fide residence requirement, appropriately defined and uniformly applied, furthers the substantial state interest in assuring that services provided for its residents are enjoyed only by residents; such a requirement does not burden or penalize the constitutional right of interstate travel, for any person is free to move to a state and to establish residence there.

14 Fla.—City of Miami v. Haigley, 143 So. 3d 1025 (Fla. 3d DCA 2014).

15 Alaska—Stanek v. Kenai Peninsula Borough, 81 P.3d 268 (Alaska 2003).

16 U.S.—Saenz v. Roe, 526 U.S. 489, 119 S. Ct. 1518, 143 L. Ed. 2d 689 (1999).

17 U.S.—Dunn v. Blumstein, 405 U.S. 330, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972).

18 Alaska—State v. Adams, 522 P.2d 1125 (Alaska 1974).

Conn.—Leech v. Veterans' Bonus Division Appeals Bd., 179 Conn. 311, 426 A.2d 289 (1979).

Me.—Lambert v. Wentworth, 423 A.2d 527 (Me. 1980).

U.S.—Kreitzer v. Puerto Rico Cars, Inc., 417 F. Supp. 498 (D.P.R. 1975).

Firefighters

A one-year preemployment residency requirement for city firefighter applicants had a rational relationship to a legitimate state end so as not to be an unconstitutional impairment of the right to travel; the classification furthered the purpose of providing a uniform system for the appointment, reduction, removal, and reinstatement of firefighters, and the Commonwealth had a great interest in the safety of its residents and having potential firefighter candidates familiar with the community and local geography.

Pa.—Cuvo v. City of Easton, 678 A.2d 424 (Pa. Commw. Ct. 1996).

13 U.S.—Hawk v. Fenner, 396 F. Supp. 1 (D.S.D. 1975).

14 U.S.—International Organization of Masters, Mates & Pilots v. Andrews, 831 F.2d 843 (9th Cir. 1987).

15 Cal.—Gurfinkel v. Los Angeles Community College Dist., 121 Cal. App. 3d 1, 175 Cal. Rptr. 201 (2d Dist. 1981).

16 Neb.—Thompson v. Board of Regents of University of Nebraska, 187 Neb. 252, 188 N.W.2d 840 (1971).

17 N.Y.—Spatt v. State, 76 Misc. 2d 114, 350 N.Y.S.2d 280 (Ct. Cl. 1972).

18 U.S.—Saenz v. Roe, 526 U.S. 489, 119 S. Ct. 1518, 143 L. Ed. 2d 689 (1999).

U.S.—Fisher v. Reiser, 610 F.2d 629 (9th Cir. 1979).

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U.S.—Sosna v. State of Iowa, 360 F. Supp. 1182 (N.D. Iowa 1973), judgment aff'd, 419 U.S. 393, 95 S. Ct. 553, 42 L. Ed. 2d 532, 19 Fed. R. Serv. 2d 925 (1975).

Pa.—Stottlemyer v. Stottlemyer, 224 Pa. Super. 123, 302 A.2d 830 (1973), order aff'd, 458 Pa. 503, 329 A.2d 892 (1974).

19 U.S.—Bright v. Parra, 919 F.2d 31 (5th Cir. 1990).

20 U.S.—Kreitzer v. Puerto Rico Cars, Inc., 417 F. Supp. 498 (D.P.R. 1975).

21 U.S.—Saenz v. Roe, 526 U.S. 489, 119 S. Ct. 1518, 143 L. Ed. 2d 689 (1999).

Minn.—Mitchell v. Steffen, 504 N.W.2d 198 (Minn. 1993).

N.Y.—Aumick v. Bane, 161 Misc. 2d 271, 612 N.Y.S.2d 766 (Sup 1994).